

**THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

**MISSION PHARMACAL COMPANY,**

**Plaintiff,**

**v.**

**VIRTUS PHARMACEUTICALS,  
LLC,**

**Defendant.**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**Civil Action No. 5:13-cv-176-OLG**

**JOINT PRETRIAL ORDER**

This cause is scheduled for final pretrial conference on September 17, 2014 at 9:30 am.

Plaintiff Mission Pharmacal Company (“Mission”) and Defendant Virtus Pharmaceuticals, LLC (“Virtus”) hereby submit this Joint Pretrial Order. Mission and Virtus are collectively referred to as the Parties.

**A. Nature of the Action**

This is an action for patent infringement and false advertising. Mission will seek to prove that Virtus infringed claim 17 of U.S. Patent 6,521,247 (the “‘247 Patent”) and falsely advertised certain products. Mission seeks damages for Virtus’s alleged infringement, false advertising, and other requested relief.

Virtus denies that it has infringed the ‘247 Patent or falsely advertised its products, and will seek to prove that claim 17 of the ‘247 Patent is invalid. Virtus denies that Mission is entitled to damages or any relief.

**B. Questions for Prospective Jurors per Local Rule CV 16(e)(1)**

The Parties’ Local Court Rule CV-16(e)(1) proposed questions to be asked of potential jurors is attached as Exhibit A.

**C. Statement of Claims or Defenses to be used in Voir Dire per Local Rule 16(e)(2)**

Mission's Local Rule 16(e)(2) statement is attached as Exhibit B. Virtus's Local Rule 16(e)(2) statement is attached as Exhibit C.

**D. List of Stipulated Facts Per Local Rule 16(e)(3)**

- 1 Mission owns the exclusive right and title to U.S. Patent 6,521,247 (the "247 Patent").
- 2 The '247 Patent has not lapsed or expired.
- 3 Virtus has sold Natalvirt CA, Natalvirt 90 DHA, and Natalvirt FLT in the United States.

**E. Exhibit Lists per Local Rule 16(e)(4)**

Mission's exhibit list is attached as Exhibit D, and Virtus's exhibit list is attached as Exhibit E.

**F. Witnesses per Local Rule 16(e)(5)**

Mission's "will call" and "may call" witness list is attached as Exhibit F. Virtus's "will call" and "may call" witness list is attached as Exhibit G.

**G. Deposition Designations per Local Rule 16(e)(6)**

Mission's deposition designations are attached as Exhibit H. Virtus's deposition designations are attached as Exhibit I. The parties have agreed to exchange deposition designations only for witnesses who may not be present at trial. If a witness who is currently expected to be at trial will not actually attend trial, the parties have agreed to supplement this disclosure with any applicable deposition designations by September 12, 2014.

**H. Proposed Jury Instructions and Verdict Forms per Local Rule 16(e)(7)**

The Parties' proposals for jury instructions are attached as Exhibit J.

**I. Motions *in Limine* per Local Rule 16(e)(9)**

The Parties are filing their respective motions *in limine* separately.

**J. The Parties' Estimate of the Probable Length of Trial per Local Rule 16(e)(10)**

The parties estimate that the trial should last five (5) court days.

Dated: September 3, 2014

Respectfully submitted,

/s/ Charles B. Walker, Jr.

Charles B. Walker, Jr.  
Texas Bar No. 00794808  
[charles.walker@nortonrosefulbright.com](mailto:charles.walker@nortonrosefulbright.com)  
Daniel A. Prati  
Texas Bar No. 24070446  
[danny.prati@nortonrosefulbright.com](mailto:danny.prati@nortonrosefulbright.com)  
FULBRIGHT & JAWORSKI LLP  
1301 McKinney, Suite 5100  
Houston, Texas 77010  
Telephone: (713) 651-5151  
Fax: (713) 651-5246

**ATTORNEYS FOR PLAINTIFF MISSION  
PHARMACAL CO.**

/s/ W. Scott Creasman

Jonathan D. Pauerstein  
Dan A. Rogers  
Rosenthal Pauerstein Sandoloski Agather LLP  
755 East Mulberry Avenue  
Suite 200  
San Antonio, TX 78212  
(210) 244-8830  
Fax: 210/354-4034  
[jpauerstein@rpsalaw.com](mailto:jpauerstein@rpsalaw.com)

W. Scott Creasman – GA Bar No. 194860  
[screasman@taylorenglish.com](mailto:screasman@taylorenglish.com)

Jeffrey R. Kuester – GA Bar No. 429960  
[jkuester@taylorenglish.com](mailto:jkuester@taylorenglish.com)

Amanda G. Hyland – GA Bar No. 325115  
[ahyland@taylorenglish.com](mailto:ahyland@taylorenglish.com)

Brett Bartel – GA Bar No. 508052  
[bbartel@taylorenglish.com](mailto:bbartel@taylorenglish.com)

**TAYLOR ENGLISH DUMA LLP**  
1600 Parkwood Circle, Suite 400  
Atlanta, Georgia 30339  
Telephone: (770) 434-6868  
Facsimile: (770) 434-7376

Admitted *Pro Hac Vice*

**ATTORNEYS FOR DEFENDANT VIRTUS  
PHARMACEUTICALS, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/Charles B. Walker, Jr.

Charles B. Walker, Jr.